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## BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

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NOV 3 2014

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IN THE MATTER OF THE PROPOSED  
RULEMAKING TO MODIFY THE  
RENEWABLE ENERGY STANDARD AND  
TARIFF RULES.

DOCKET NO. RE-00000C-14-0112

**STAFF'S COMMENTS**

ORIGINAL

The Arizona Corporation Commission ("Commission") Staff files the following comments on the proposed Renewable Energy Standard Tariff ("REST") rule revisions.

**I. BACKGROUND.**

The proposed rules are the culmination of several Commission proceedings that have addressed how to measure utility compliance with the REST Rules. This issue was first raised by Arizona Public Service Company ("APS") and Tucson Electric Power Company ("TEP") in their 2012 REST plans, which addressed the issues related to achieving compliance with the distributed energy ("DE") carve-out (required by A.A.C. R14-2-1805) once incentives are no longer offered. *See, e.g.,* Docket No. E-01345A-10-0394.

A.A.C. R14-2-1804 requires every Affected Utility to serve a portion of its annual retail load with renewable energy. Under A.A.C. R14-2-1801(E), -1804, and -1805, thirty percent of an Affected Utility's renewable energy requirements must come from renewable DE. Each year, the renewable energy and the DE requirements increase by a set percentage.

Compliance with the REST Rules is measured by Renewable Energy Credits ("RECs"). The REST Rules define a REC as "the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by Distributed Renewable Energy Resources." A.A.C. R14-2-1801(N). A.A.C. R14-2-1803 sets forth requirements for the creation and transfer of RECs.

Until recently, Arizona utilities acquired RECs from owners of eligible DE projects through contractual agreements. Under these agreements, customers would transfer DE RECs to the utilities

1 in exchange for REST incentives, which were used to offset part of the cost of installing DE systems.  
2 These incentives have taken the form of residential and commercial up-front incentives (“UFIs”) and  
3 commercial performance-based incentives (“PBIs”), and are funded by a REST surcharge assessed  
4 monthly to every retail electric service. UFIs were as high as \$4.00 per watt for residential DE  
5 systems in 2006, but had been entirely eliminated by 2013 for some utilities.

6 In Decision No. 72737 (January 18, 2012), the Commission noted that APS’s future ability to  
7 meet its annual DE REST requirement might be in question, due to the rapid decrease in the installed  
8 costs for solar photovoltaic (“PV”) systems and the resulting reduction in APS’s REST-funded  
9 incentives. Decision No. 72737 ordered APS to suggest possible solutions to the emerging issue in  
10 APS’s 2013 REST Plan filing.

11 APS subsequently proposed “Track and Record” in its 2013 REST filing (Docket No. E-  
12 01345A-12-0290). Under this proposal, APS would track all energy produced by DE systems that  
13 are interconnected with its system, and would then record (or count) that energy for purposes of  
14 REST compliance. TEP and UNS Electric, Inc. offered four possible solutions, which partially  
15 incorporated similar “Track and Record” proposals.<sup>1</sup>

16 In its Staff Reports on the 2013 implementation plans, Staff recommended approval of the  
17 “Track and Record” methodology for all Affected Utilities. Staff noted, however, that comments had  
18 been filed that raised concerns about the “Track and Record” proposal’s impact on REC integrity.  
19 After the Staff Report was filed, a number of parties filed comments in the APS and TEP 2013 REST  
20 dockets, opposing the “Track and Record” methodology. In a subsequent memorandum, Staff  
21 recommended a hearing on these issues because of the number and tenor of opposing comments.

22 The Commission agreed with Staff’s recommendation and convened an evidentiary hearing.  
23 Thirteen parties participated, presenting twelve witnesses over a five-day period. There were many  
24 alternatives discussed, such as requiring utilities to pay to acquire RECs, allowing utilities to obtain  
25 RECs as a condition of interconnection or net metering, reducing the REST requirement to reflect  
26 non-utility owned RECs, reintroducing up-front incentives, creating a maximum conventional energy

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27  
28 <sup>1</sup> Docket No. E-01933A-12-0296; Docket No. E-04204A-12-0297.

1 requirement, counting all RECs toward compliance, and monitoring non-utility owned RECs solely  
2 for informational purposes.

3 On February 26, 2014, the Commission docketed Decision No. 74365, its Opinion and Order  
4 on Track and Record and Potential Alternatives. That decision authorized each Affected Utility to  
5 request, in its next REST Implementation Plan Filing, a full permanent waiver from the requirements  
6 of A.A.C. R14-2-1805 for a period of one year, such that the annual requirement would not be rolled  
7 into the subsequent year. Under the decision, the Staff Report for each utility implementation plan  
8 would include a public interest analysis and recommendation on the requested waiver.

9 Decision No. 74365 also stated that the Commission would conduct a rulemaking in order to  
10 consider different methods for measuring utility compliance with the REST Rules. Staff  
11 subsequently opened a rulemaking docket, and then sought comments on several proposals. At an  
12 open meeting in July, the Commission directed Staff to prepare a draft Notice of Proposed  
13 Rulemaking for the Commission's consideration, which the Commission subsequently adopted in  
14 Decision No. 74753. The notice of proposed rulemaking explains the purpose of the proposed rules as  
15 follows:

16 The proposed rule changes will clarify and update how the Commission  
17 deals with renewable energy compliance and related renewable energy  
18 credits ("RECs"). The Commission's Renewable Energy Standard and  
19 Tariff ("REST") rules have not been updated since they were approved  
20 by the Commission in Decision No. 69127 (November 14, 2006).  
21 Since this decision, the renewable energy marketplace has changed  
22 dramatically. The existing REST rules require the utility to serve a  
23 growing percentage of its retail sales each year via renewable energy,  
24 with a carve-out for distributed energy ("DE"). The rules were  
25 predicated on utilities acquiring RECs to achieve compliance. In the  
26 DE market, RECs were acquired by the utility when the utility gave the  
27 entity installing the renewable energy system an incentive. In recent  
28 years, some utilities have seen their incentives eliminated as market  
conditions have changed. This led to utilities seeking guidance from  
the Commission as to how they should demonstrate compliance with  
the DE portion of the REST rules when the transaction that REC  
acquisition was predicated upon is no longer occurring.

25 ...

26 ...

27 ...

1 **II. STAFF RECOMMENDS THAT THE COMMISSION ADOPT THE NPRM AS A**  
2 **FINAL RULE IN ORDER TO CLEARLY ESTABLISH THE MEANS BY WHICH**  
3 **THE COMMISSION WILL MEASURE UTILITY COMPLIANCE UNDER THE**  
4 **REST RULES.**

5 Staff believes that the Commission's intent in this rulemaking is to clearly eliminate the  
6 specter of double-counting. This intent is demonstrated by the following proposed amendment to  
7 R14-2-1805(F), as set forth in the proposed rules:

8 Any Renewable Energy Credit created by production of renewable  
9 energy which the Affected Utility does not own *shall be retained* by the  
10 entity creating the Renewable Energy Credit. *Such Renewable Energy*  
11 *Credit may not be considered used or extinguished by any Affected*  
12 *Utility without approval and proper documentation from the entity*  
13 *creating the Renewable Energy Credit*, regardless of whether or not the  
14 Commission acknowledged the kWhs associated with non-utility  
15 owned Renewable Energy Credits.<sup>2</sup>

16 In addition, the proposed amendment (underlined in the following quotation) to the reporting  
17 requirements of R14-2-1812(B) also clearly eliminates any possibility of double counting. Each year,  
18 Affected Utilities would be required to file the following information:

19 The actual kWh of energy produced within its service territory and the  
20 actual kWh of energy or equivalent obtained from Eligible Renewable  
21 Energy Resources, differentiating between kWhs for which the  
22 Affected Utility owns the Renewable Energy Credits and kWhs  
23 produced in the Affected Utility's service territory for which the  
24 Affected Utility does not own the Renewable Energy Credits . . . .<sup>3</sup>

25 These proposed amendments plainly demonstrate that the Commission intends for the RECs to  
26 remain with their owners unless specifically transferred.

27 Some have implied that these clear statements may be obscured by other language in the  
28 NPRM, such as the word "acknowledge" in the proposed revisions to R14-2-1805(F) and (G). The  
weakness with this argument is that it focuses upon the word "acknowledge" in isolation and ignores  
the context provided by the proposed amendments as a whole. For example, in the above-quoted

<sup>2</sup> Decision No. 74753, Attachment at 1 (September 15, 2014) (emphasis added).

<sup>3</sup> Decision No. 74753, Attachment at 2 (September 15, 2014) (amending language indicated by underlining).

1 amendments, it is absolutely clear that double counting is not intended. In addition, the Preamble to  
2 the NPRM specifically states that the term “acknowledged” means that non-utility owned RECs will  
3 be reported for informational purposes only.

4 If the Commission were to conclude that additional clarification would be desirable, Staff  
5 suggests the following additions, which are set forth in bold type below, to the NPRM’s revisions to  
6 R14-2-1805(G):

7 The reporting of kWhs associated with Renewable Energy Credits not  
8 owned by the utility will be acknowledged **for reporting purposes,**  
9 **but will not be eligible for compliance with R14-2-1804 and -1805.**

10 A similar change (also set forth in bold type) could be made to the NPRM’s revisions to R14-2-  
11 1805(F):

12 Any Renewable Energy Credit created by production of renewable  
13 energy which the Affected Utility does not own shall be retained by the  
14 entity creating the Renewable Energy Credit. Such Renewable Energy  
15 Credit may not be considered used or extinguished by any Affected  
16 Utility without approval and proper documentation from the entity  
17 creating the Renewable Energy Credit, regardless of whether or not the  
18 Commission acknowledged **the reporting of** kWhs associated with  
19 non-utility owned Renewable Energy Credits.

20 Finally, Staff suggests that the Commission delete the word “compliance” in three places in R14-2-  
21 1812: in the heading, in the first sentence in R14-2-1812(B), and at the end of R14-2-1812(C). These  
22 suggested changes to the NPRM are shown below:

23 R14-2-1812. **Compliance** Reports

24 . . . .

25 B. The **compliance** report shall include the following information:

26 . . . .

27 C. The Commission may consider all available information and may hold a  
28 hearing to determine whether an Affected Utility’s **compliance** report satisfies the  
requirements of these rules.

1 All of these suggested changes are set forth in Exhibit A to these comments.

2       These suggested changes are intended to clarify (if the Commission believes that is necessary)  
3 that the non-utility owned RECs (or kWhs) will be reported for informational purposes only and will  
4 not be used to determine compliance with the REST Rules. Staff believes that adoption of these  
5 slight changes (as set forth in Exhibit A) would eliminate any potential for allegations of ambiguity.  
6 Adoption of the NPRM as a final rule, with these changes, should completely eliminate any question  
7 about the Commission's intent.

8  
9 **III. STAFF'S CLARIFYING MODIFICATIONS DO NOT AMOUNT TO A**  
10 **"SUBSTANTIAL CHANGE" FOR PURPOSES OF A.R.S. § 41-1025(A).**

11       The additions and other minor changes that Staff has suggested would not make the rules  
12 substantially different than that which was proposed in the NPRM. Any person whose interests  
13 would be affected by the published proposed rules has had adequate notice because Staff's suggested  
14 clarifying language does not change the extent, subject matter, or issues involved in the published  
15 rules. Further, the effects of the clarifications do not differ from the effects of the published proposed  
16 rules. In addition, parties were given further notice of these clarifications through the preamble to the  
17 proposed rules that was published by the Secretary of State.

18       For example, deleting the word "Compliance" from "Compliance Reports" is not a substantial  
19 change. This modification merely reflects that the purpose of the reports should be consistent with  
20 the published proposed rules. Similarly, clarifying that non-utility owned RECs will not be counted  
21 toward utility REST compliance does not change the effects of the published proposed rules; instead,  
22 this language simply adds clarity consistent with the overall effects of the proposed rules. Thus,  
23 under the criteria set forth in A.R.S. § 41-1025(A), Staff's clarifying language does not constitute a  
24 substantial change to the proposed rules, and the Commission may adopt these modifications without  
25 delaying the rulemaking process.

26 ...

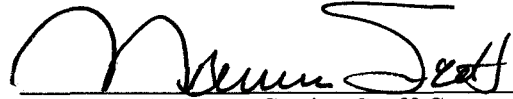
27 ...

28 ...

1 **IV. CONCLUSION.**

2 For the reasons stated above, Staff recommends that the Commission enact the NPRM as a  
3 final rule, with the clarifying additions and modifications set forth in Exhibit A.

4 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of November, 2014.

5  
6 

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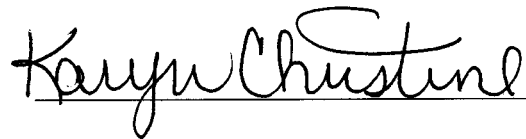
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**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;**

**SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION**

**FIXED UTILITIES**

**ARTICLE 18. RENEWABLE ENERGY STANDARD AND TARIFF**

**R14-2-1801. Definitions**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change
- R. No change

**R14-2-1802. Eligible Renewable Energy Resources**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
    - a. No change
    - b. No change
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change
    - a. No change
    - b. No change
    - c. No change
  - 10. No change
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- B. No change
  - 1. No change
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  - 3. No change
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  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change

10. No change

11. No change

12. No change

C. No change

D. No change

**R14-2-1803. Renewable Energy Credits**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change

**R14-2-1804. Annual Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change

**R14-2-1805. Distributed Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. Any Renewable Energy Credit created by production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the Renewable Energy Credit. Such Renewable Energy Credit may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the Renewable Energy Credit, regardless of whether or not the Commission acknowledged the reporting of the kWhs associated with non-utility owned Renewable Energy Credits.
- G. The reporting of kWhs associated with Renewable Energy Credits not owned by the utility will be acknowledged for reporting purposes, but will not be eligible for compliance with R14-2-1804 and -1805.

**R14-2-1806. Extra Credit Multipliers**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- G. No change

**R14-2-1807. Manufacturing Partial Credit**

- A. No change
- B. No change
- C. No change

**R14-2-1808. Tariff**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change
- D. No change
- E. No change

**R14-2-1809. Customer Self-Directed Renewable Energy Option**

- A. No change
- B. No change
- C. No change

**R14-2-1810. Uniform Credit Purchase Program**

- A. No change
- B. No change

**R14-2-1811. Net Metering and Interconnection Standards**

No change

**R14-2-1812. Compliance Reports**

- A. Beginning April 1, 2007, and every April 1st thereafter, each Affected Utility shall file with Docket Control a report that describes its compliance with the requirements of these rules for the previous calendar year and provides other relevant information. The Affected Utility shall also transmit to the Director of the Utilities Division an electronic copy of this report that is

suitable for posting on the Commission's web site.

- B. The compliance report shall include the following information:
  - 1. The actual kWh of energy produced within its service territory and the actual kWh of energy or equivalent obtained from Eligible Renewable Energy Resources, differentiating between kWhs for which the Affected Utility owns the Renewable Energy Credits and kWhs produced in the Affected Utility's service territory for which the Affected Utility does not own the Renewable Energy Credits;
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
- C. The Commission may consider all available information and may hold a hearing to determine whether an Affected Utility's compliance report satisfied the requirements of these rules.

**R14-2-1813. Implementation Plans**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change

**R14-2-1814. Electric Power Cooperatives**

- A. No change
- B. No change

**R14-2-1815. Enforcement and Penalties**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
- C. No change
- D. No change

**R14-2-1816. Waiver from the Provisions of this Article**

- A. No change
- B. No change
- C. No change

**Appendix A. Sample Tariff**

No change